

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FIRST LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 75**

Introduced by Pirsch, 4.

Read first time January 8, 2009

Committee: Banking, Commerce and Insurance

A BILL

1 FOR AN ACT relating to banking and finance; to amend section  
2 8-157.01, Reissue Revised Statutes of Nebraska; to change  
3 provisions relating to automatic teller machine usage  
4 fees; to repeal the original section; and to declare an  
5 emergency.  
6 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 8-157.01, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           8-157.01 (1) Any financial institution which has a main  
4 chartered office or approved branch located in the State of  
5 Nebraska may establish and maintain any number of automatic teller  
6 machines at which all banking transactions, defined as receiving  
7 deposits of every kind and nature and crediting such to customer  
8 accounts, cashing checks and cash withdrawals, transfer of funds  
9 from checking accounts to savings accounts, transfer of funds  
10 from savings accounts to checking accounts, transfer of funds from  
11 either checking accounts and savings accounts to accounts of other  
12 customers, payment transfers from customer accounts into accounts  
13 maintained by other customers of the financial institution or  
14 the financial institution, including preauthorized draft authority,  
15 preauthorized loans, and credit transactions, receiving payments  
16 payable at the financial institution or otherwise, and account  
17 balance inquiry, may be conducted. Any other transaction incidental  
18 to the business of the financial institution or which will provide  
19 a benefit to the financial institution's customers or the general  
20 public may be conducted at an automatic teller machine upon  
21 thirty days' prior written notice to the director if the director  
22 does not object to the proposed other transaction within the  
23 thirty-day notice period. Neither such automatic teller machines  
24 nor the transactions conducted thereat shall be construed as the  
25 establishment of a branch or as branch banking. Such automatic

1 teller machines shall be made available on a nondiscriminating  
2 basis for use by customers of any financial institution which  
3 has a main chartered office or approved branch located in the  
4 State of Nebraska which becomes a user financial institution. It  
5 shall not be deemed discrimination if an automatic teller machine  
6 does not offer the same transaction services as other automatic  
7 teller machines or if there are no fees charged between affiliate  
8 financial institutions for the use of automatic teller machines.

9           (2) Any financial institution may become a user  
10 financial institution by agreeing to pay the establishing financial  
11 institution its automatic teller machine usage fee. Such agreement  
12 shall be implied by the use of such automatic teller machines.  
13 Nothing in this subsection shall prohibit a user financial  
14 institution from agreeing to responsibilities and benefits which  
15 might be contained in a standardized agreement. The establishing  
16 financial institution or its designated data processing center  
17 shall be responsible for transmitting transactions originating from  
18 its automatic teller machine to a switch, but nothing contained  
19 in this section shall be construed to require routing of all  
20 transactions to a switch. All automatic teller machines must be  
21 made available on a nondiscriminating basis, for use by customers  
22 of any financial institution which has a main chartered office or  
23 approved branch located in the State of Nebraska which becomes a  
24 user financial institution, through methods, fees, and processes  
25 that the establishing financial institution has provided for

1 switching transactions. The director, upon notice and after a  
2 hearing, may terminate or suspend the use of any automatic teller  
3 machine if he or she determines that it is not available on a  
4 nondiscriminating basis for use by customers of any financial  
5 institution which has a main chartered office or approved branch  
6 located in the State of Nebraska which becomes a user financial  
7 institution or that transactions originated by customers of user  
8 financial institutions are not being routed to a switch or other  
9 data processing centers. Nothing in this section may be construed  
10 to prohibit nonbank employees from assisting in transactions  
11 originated at the automatic teller machines, and such assistance  
12 shall not be deemed to be engaging in the business of banking. Such  
13 nonbank employees may be trained in the use of the automatic teller  
14 machines by financial institution employees.

15 (3) An establishing financial institution shall not  
16 be deemed to make an automatic teller machine available on a  
17 nondiscriminating basis if, through personnel services offered,  
18 advertising on or off the automatic teller machine's premises, or  
19 otherwise, it discriminates in the use of the automatic teller  
20 machine against any user financial institution which has a main  
21 chartered office or approved branch located in the State of  
22 Nebraska.

23 (4)(a) Any consumer initiating an electronic funds  
24 transfer at an automatic teller machine for which an automatic  
25 teller machine surcharge will be imposed shall receive notice in

1 accordance with the provisions of 15 U.S.C. 1693b(d) (3) (A) and (B) ,  
2 as such section existed on January 1, 2004. Such notice shall (i)  
3 be posted in a prominent and conspicuous location on or at the  
4 automatic teller machine at which the electronic funds transfer is  
5 initiated by the consumer and (ii) appear on the screen of the  
6 automatic teller machine or appear on a paper notice issued from  
7 such machine after the transaction is initiated and before the  
8 consumer is irrevocably committed to completing the transaction.

9 (b) Subdivision (a)(ii) of this subsection shall not  
10 apply until January 1, 2005, to any automatic teller machine that  
11 lacks the technical capability to disclose the notice on the screen  
12 or to issue a paper notice after the transaction is initiated  
13 and before the consumer is irrevocably committed to completing the  
14 transaction.

15 (5) A point-of-sale terminal may be established at any  
16 point within this state. A financial institution may contract with  
17 a seller of goods and services or any other third party for  
18 the operation of point-of-sale terminals. A point-of-sale terminal  
19 shall be made available on a nondiscriminating basis for use by  
20 customers of any financial institution which has a main chartered  
21 office or approved branch located in the State of Nebraska which  
22 becomes a user financial institution. Nothing in this subsection  
23 shall prohibit payment of fees to a financial institution which  
24 issues an access device used to initiate electronic funds transfer  
25 transactions at a point-of-sale terminal.

1           (6) A seller of goods and services or any other third  
2 party on whose premises one or more point-of-sale terminals are  
3 established shall not be, solely by virtue of such establishment,  
4 a financial institution and shall not be subject to the  
5 laws governing, or other requirements imposed on, financial  
6 institutions, except for the requirement that it faithfully  
7 perform its obligations in connection with any transaction  
8 originated at any point-of-sale terminal on its premises. The  
9 acquiring financial institution shall be responsible for compliance  
10 with all applicable standards, rules, and regulations governing  
11 point-of-sale transactions.

12           (7) Any financial institution, upon a request of the  
13 director, shall file with the director a current listing of all  
14 point-of-sale terminals established by the financial institution  
15 within this state. For purposes of this subsection, point-of-sale  
16 terminal shall include a group of one or more of such terminals  
17 established at a single business location. Such listing shall  
18 contain any reasonable descriptive information pertaining to the  
19 point-of-sale terminal as required by the director. Neither the  
20 establishment of such point-of-sale terminal nor any transactions  
21 conducted thereat shall be construed as the establishment of  
22 a branch or as branch banking. Following establishment of a  
23 point-of-sale terminal, the director, upon notice and after a  
24 hearing, may terminate or suspend the use of such point-of-sale  
25 terminal if he or she determines that it is not made available on

1 a nondiscriminating basis for use by customers of any financial  
2 institution which has a main chartered office or approved branch  
3 located in the State of Nebraska which becomes a user financial  
4 institution, that the necessary information is not on file with  
5 the director, or that transactions originated by customers of  
6 user financial institutions are not being routed to a switch  
7 or other data processing center. Nothing in this section shall  
8 be construed to prohibit nonbank employees from assisting in  
9 transactions originated at the point-of-sale terminals, and such  
10 assistance shall not be deemed to be engaging in the business of  
11 banking.

12 (8) Transactions at point-of-sale terminals may include:

13 (a) Check guarantees;

14 (b) Account balance inquiries;

15 (c) Transfers of funds from a customer's account for  
16 payment to a seller's account for goods and services on whose  
17 premises the point-of-sale terminal is located in payment for the  
18 goods and services;

19 (d) Cash withdrawals by a customer from the customer's  
20 account or accounts;

21 (e) Transfers between accounts of the same customers at  
22 the same financial institution; and

23 (f) Such other transactions as the director, upon  
24 application, notice, and hearing, may approve.

25 (9) (a) Automatic teller machines may be established and

1 maintained by a financial institution which has a main chartered  
2 office or approved branch located in the State of Nebraska, by  
3 a group of two or more of such financial institutions, or by a  
4 combination of such financial institution or financial institutions  
5 and a third party.

6 (b) Point-of-sale terminals may be established and  
7 maintained by a financial institution which has a main chartered  
8 office or approved branch located in the State of Nebraska, by  
9 a group of two or more of such financial institutions, or by a  
10 combination of such financial institutions and a third party. No  
11 one, through personnel services offered, advertising on or off the  
12 point-of-sale terminal premises, or otherwise, may discriminate  
13 in the use of the point-of-sale terminal against any other user  
14 financial institution.

15 (10) All financial institutions shall be given an equal  
16 opportunity for the use of and access to a switch, and no  
17 discrimination shall exist or preferential treatment be given in  
18 either the operation of such switch or the charges for use thereof.  
19 The operation of such switch shall be with the approval of the  
20 director. Approval of such switch shall be given by the director  
21 when he or she determines that its design and operation are such  
22 as to provide access thereto and use thereof by any financial  
23 institution without discrimination as to access or cost of its use.  
24 Any switch established in Nebraska and approved by the director  
25 prior to January 1, 1993, shall be deemed to be approved for

1 purposes of this section.

2 (11) Use of an automatic teller machine or a  
3 point-of-sale terminal through access to a switch and use of  
4 any switch shall be made available on a nondiscriminating basis  
5 to any financial institution. A financial institution shall only  
6 be permitted use of the switch if the financial institution  
7 conforms to reasonable technical operating standards which have  
8 been established by the switch.

9 (12) To assure maximum safety and security against  
10 malfunction, fraud, theft, and other accidents or abuses and  
11 to assure that all such access devices will have the capability  
12 of activating all automatic teller machines and point-of-sale  
13 terminals established in this state, no automatic teller machine  
14 or point-of-sale terminal shall accept an access device which  
15 does not conform to such specifications as are generally accepted.  
16 No automatic teller machine or point-of-sale terminal shall be  
17 established or operated which does not accept an access device  
18 which conforms with such specifications.

19 An automatic teller machine shall bear a logo type or  
20 other identification symbol designed to advise customers that  
21 the automatic teller machine may be activated by any access  
22 device which complies with the generally accepted specifications.  
23 A point-of-sale terminal shall either bear or the premises on  
24 which the point-of-sale terminal is established shall contain  
25 a visible logo type or other identification symbol designed to

1 advise customers that the point-of-sale terminal may be activated  
2 by any access device which complies with the generally accepted  
3 specifications. An automatic teller machine or point-of-sale  
4 terminal may also bear, at the option of the establishing or  
5 acquiring financial institution, any of the following:

6 (a) The names of all individual financial institutions  
7 using such automatic teller machines or point-of-sale terminals  
8 in alphabetical order, except that the establishing or acquiring  
9 financial institution may be listed first, and in a uniform  
10 typeface, size, and color; or

11 (b) The logo type or symbol of any association,  
12 corporation, or other entity or organization formed by one or more  
13 of the financial institutions using such automatic teller machines  
14 or point-of-sale terminals.

15 (13) If the director, upon notice and hearing, determines  
16 at any time that the design or operation of a switch or provision  
17 for use thereof does discriminate against any financial institution  
18 in providing access thereto and use thereof either through access  
19 thereto or by virtue of the cost of its use, he or she may revoke  
20 his or her approval of such switch operation and immediately order  
21 the discontinuance of the operation of such switch.

22 (14) If it is determined by the director, after notice  
23 and hearing, that discrimination against any financial institution  
24 has taken place, that one financial institution has been preferred  
25 over another, or that any financial institution or person has not

1 complied with any of the provisions of this section, he or she  
2 shall immediately issue a cease and desist order or an order for  
3 compliance within ten days after the date of the order, and upon  
4 noncompliance with such order, the offending financial institution  
5 shall be subject to sections 8-1,134 to 8-1,139 and to having the  
6 privileges granted in this section revoked.

7 (15) For purposes of this section:

8 (a) Access means the ability to utilize an automatic  
9 teller machine or a point-of-sale terminal to conduct permitted  
10 banking transactions or purchase goods and services electronically;

11 (b) Access device means a code, a transaction card,  
12 or any other means of access to a customer's account, or any  
13 combination thereof, that may be used by a customer for the purpose  
14 of initiating an electronic funds transfer at an automatic teller  
15 machine or a point-of-sale terminal;

16 (c) Account means a checking account, a savings account,  
17 a share account, or any other customer asset account held by a  
18 financial institution. Such an account may also include a line of  
19 credit which a financial institution has agreed to extend to its  
20 customer;

21 (d) Acquiring financial institution means any financial  
22 institution establishing a point-of-sale terminal;

23 (e) Affiliate financial institution means any financial  
24 institution which is a subsidiary of the same bank holding company;

25 (f) Electronic funds transfer means any transfer of

1 funds, other than a transaction originated by check, draft, or  
2 similar paper instrument, that is initiated through a point-of-sale  
3 terminal, an automatic teller machine, or a personal terminal for  
4 the purpose of ordering, instructing, or authorizing a financial  
5 institution to debit or credit an account;

6 (g) Establishing financial institution means any  
7 financial institution establishing an automatic teller machine  
8 which has a main chartered office or approved branch located in  
9 the State of Nebraska;

10 (h) Financial institution means a state-chartered  
11 or federally chartered bank, savings bank, building and loan  
12 association, savings and loan association, or credit union, or a  
13 subsidiary of any such entity;

14 (i) Foreign financial institution means a financial  
15 institution located outside the United States;

16 ~~(i)~~ (j) Personal identification number means a  
17 combination of numerals or letters selected for a customer of  
18 a financial institution, a merchant, or any other third party  
19 which is used in conjunction with an access device to initiate an  
20 electronic funds transfer transaction;

21 ~~(j)~~ (k) Personal terminal means a personal computer and  
22 telephone, wherever located, operated by a customer of a financial  
23 institution for the purpose of initiating a transaction affecting  
24 an account of the customer; and

25 ~~(k)~~ (l) User financial institution means any financial

1 institution which desires to avail itself of and provide its  
2 customers with automatic teller machine or point-of-sale terminal  
3 services.

4 (16) Nothing in this section prohibits ordinary  
5 clearinghouse transactions between financial institutions.

6 (17) Nothing in this section requires any federally  
7 chartered establishing financial institution to obtain the approval  
8 of the director for the establishment of any automatic teller  
9 machine.

10 (18) Nothing in this section shall prevent any financial  
11 institution which has a main chartered office or an approved  
12 branch located in the State of Nebraska from participating  
13 in a national automatic teller machine program to allow its  
14 customers to use automatic teller machines located outside of  
15 the State of Nebraska which are established by out-of-state  
16 financial institutions or foreign financial institutions or to  
17 allow customers of out-of-state financial institutions or foreign  
18 financial institutions to use its automatic teller machines  
19 located in the State of Nebraska. Such participation and any  
20 automatic teller machine usage fees charged or received pursuant  
21 to the national automatic teller machine program or usage fees  
22 charged for the use of its automatic teller machines by customers  
23 of out-of-state financial institutions or foreign financial  
24 institutions shall not be considered for purposes of determining  
25 if an automatic teller machine located in the State of Nebraska

1 has been made available on a nondiscriminating basis for use by  
2 customers of any financial institution which has a main chartered  
3 office or approved branch located in the State of Nebraska which  
4 becomes a user financial institution.

5           Sec. 2. Original section 8-157.01, Reissue Revised  
6 Statutes of Nebraska, is repealed.

7           Sec. 3. Since an emergency exists, this act takes effect  
8 when passed and approved according to law.